

Finally, the Commission's non-discrimination safeguards should reasonably extend to unaffiliated program packagers fair treatment in channel positioning and marketing. While the OVS framework should maximize the viability of Open Video Systems as an entry option for LECs and other multichannel video providers, intra-system rivals should not be placed at a severe competitive disadvantage against the OVS-affiliated packager.

C. The Commission Should Maximize The Viability of OVS Systems Consistent With Its Limited Discretion In Implementing Carriage Rights For Local Broadcast Stations

The Notice calls for comment on the "overall applicability" to OVS of the statutory must-carry and retransmission consent rules,^{34/} which the 1996 Act requires the Commission to replicate "to the extent possible" within the OVS regulatory framework. The FCC thus has little discretion to alter the basic scheme providing "local" commercial broadcasters the choice between exercising mandatory carriage rights or seeking retransmission consent from the OVS operator, yet the Commission should resolve certain particulars of implementation consistent with its interest in promoting the viability of OVS systems.^{35/}

Given the "signal availability" provision within the mandatory carriage statutory scheme,^{36/} the OVS operator should be the entity ultimately responsible for ensuring that

^{34/} Notice at ¶ 59.

^{35/} See 47 U.S.C. § 653(C)(1) (directing that the mandatory carriage and retransmission consent obligations run to the "operator of an open video system").

^{36/} 47 U.S.C. § 534(b)(7).

local broadcast signals carried pursuant to must-carry rules are available to every subscriber to an Open Video System. While it may be possible to allow an OVS operator to manage this responsibility in various ways, Viacom suggests that an OVS operator be required to treat all must-carry broadcast signals as "shared channels" available for co-packaging with every program package offered on the OVS facility.^{37/} Such shared broadcast channels would not be counted against any limits on any program packager's channel capacity on an Open Video System.^{38/}

The geographic coverage area of an Open Video System obviously will have a significant impact on how many broadcast signals will be eligible for carriage. No OVS operator would be required to devote more than the statutory maximum one-third of its channel capacity to local broadcast signals. Yet in those cases where an OVS operator has chosen to deploy a system that "span[s] multiple television markets,"^{39/} the Commission should allow the operator to decide whether it will provide all eligible broadcast signals to

^{37/} See 47 U.S.C. § 534(b)(1). Likewise, the Commission should give the OVS operator discretion to treat broadcast signals carried pursuant to retransmission consent as shared channels, potentially available for co-packaging with other program packagers offering services on the system.

On a related point, the Commission should not -- and, under the statute, need not -- force a local broadcaster's must-carry/retransmission consent election for the purposes of cable carriage to bind that broadcaster to the same election choice for purposes of OVS carriage in the same market.

^{38/} Until digital technology provides comparable access to subscribers, shared broadcast signals should be carried on an OVS network's analog channels.

^{39/} Notice at ¶ 60.

every OVS subscriber or instead configure its facility so that only subscribers located within a particular TV market receive the broadcast signals eligible for carriage in that market.

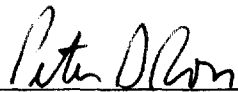
CONCLUSION

Viacom respectfully urges the Commission to adopt the foregoing proposals to govern provision of OVS service. The public interest benefits of a regulatory scheme that can provide both inter-system and intra-system competition should not be lost because of the challenges presented by implementation. The Commission's rules must strike a balance so that unaffiliated program packagers can enjoy fair access to, and non-discriminatory

treatment on, OVS facilities, while LECs enjoy sufficient flexibility to create and design Open Video Systems that can vigorously compete in the marketplace.

Respectfully submitted,

VIACOM INC.

By: 
Lawrence W. Secrest, III
Peter D. Ross
Rosemary C. Harold

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

April 1, 1996

CERTIFICATE OF SERVICE

I, Kenneth J. Krisko, certify that the original and eight copies of the foregoing "COMMENTS OF VIACOM INC." were served via hand-delivery on this 1st day of April, 1996, to the following

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street N.W.
Room 222
Washington, D.C. 20554

International Transcription Services, Inc.
2100 M Street N.W.
Suite 140
Washington, D.C. 20554
(one copy)

Larry Walke
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W.
Room 408A
Washington, D.C. 20554
(one copy and diskette copy)

As requested by the Commission's Public Notice dated March 22, 1996, two of the eight above-mentioned copies were annotated "Extra Public Copy."


Kenneth J. Krisko